

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Robert Elguezabal,

Plaintiff,

v.

Pacsierra LLC, a California Limited
Liability Company;
Cardenas Markets, Inc., a
California Corporation; and Does 1-
10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Robert Elguezabal complains of Defendants Pacsierra LLC;
Cardenas Markets, Inc.; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who uses a wheelchair for mobility.

2. In June 2014, Defendant Pacsierra LLC was the real property owner of the building/parcel located at or about 140 West 40th Street, San Bernardino, California.

1 3. In July 2014, Defendant Pacsierra LLC was the real property owner of
2 the building/parcel located at or about 140 West 40th Street, San Bernardino,
3 California.

4 4. In August 2014, Defendant Pacsierra LLC was the real property owner
5 of the building/parcel located at or about 140 West 40th Street, San
6 Bernardino, California.

7 5. In September 2014, Defendant Pacsierra LLC was the real property
8 owner of the building/parcel located at or about 140 West 40th Street, San
9 Bernardino, California.

10 6. In October 2014, Defendant Pacsierra LLC was the real property owner
11 of the building/parcel located at or about 140 West 40th Street, San
12 Bernardino, California.

13 7. In December 2014, Defendant Pacsierra LLC was the real property
14 owner of the building/parcel located at or about 140 West 40th Street, San
15 Bernardino, California.

16 8. In February 2015, Defendant Pacsierra LLC was the real property
17 owner of the building/parcel located at or about 140 West 40th Street, San
18 Bernardino, California.

19 9. In March 2015, Defendant Pacsierra LLC was the real property owner
20 of the building/parcel located at or about 140 West 40th Street, San
21 Bernardino, California.

22 10. In April 2015, Defendant Pacsierra LLC was the real property owner of
23 the building/parcel located at or about 140 West 40th Street, San Bernardino,
24 California.

25 11. Currently, Defendant Pacsierra LLC is the real property owner of the
26 building/parcel located at or about 140 West 40th Street, San Bernardino,
27 California.

28 12. In June 2014, Defendant Cardenas Markets, Inc. was the business

1 owner of Cardenas Market, located at or about 140 West 40th Street, San
2 Bernardino, California (“Cardenas”).

3 13. In July 2014, Defendant Cardenas Markets, Inc. was the business owner
4 of Cardenas.

5 14. In August 2014, Defendant Cardenas Markets, Inc. was the business
6 owner of Cardenas.

7 15. In September 2014, Defendant Cardenas Markets, Inc. was the
8 business owner of Cardenas.

9 16. In October 2014, Defendant Cardenas Markets, Inc. was the business
10 owner of Cardenas.

11 17. In December 2014, Defendant Cardenas Markets, Inc. was the business
12 owner of Cardenas.

13 18. In February 2015, Defendant Cardenas Markets, Inc. was the business
14 owner of Cardenas.

15 19. In March 2015, Defendant Cardenas Markets, Inc. was the business
16 owner of Cardenas.

17 20. In April 2015, Defendant Cardenas Markets, Inc. was the business
18 owner of Cardenas.

19 21. Currently, Defendant Cardenas Markets, Inc. is the business owner of
20 Cardenas.

21 22. Plaintiff does not know the true names of Defendants, their business
22 capacities, their ownership connection to the property and business, or their
23 relative responsibilities in causing the access violations herein complained of,
24 and alleges a joint venture and common enterprise by all such Defendants.
25 Plaintiff is informed and believes that each of the Defendants herein,
26 including Does 1 through 10, inclusive, is responsible in some capacity for the
27 events herein alleged, or is a necessary party for obtaining appropriate relief.
28 Plaintiff will seek leave to amend when the true names, capacities,

1 connections, and responsibilities of the Defendants and Does 1 through 10,
2 inclusive, are ascertained.

3
4 **JURISDICTION & VENUE:**

5 23. The Court has subject matter jurisdiction over the action pursuant to 28
6 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
7 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

8 24. Pursuant to supplemental jurisdiction, an attendant and related cause
9 of action, arising from the same nucleus of operative facts and arising out of
10 the same transactions, is also brought under California's Unruh Civil Rights
11 Act, which act expressly incorporates the Americans with Disabilities Act.

12 25. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
13 founded on the fact that the real property which is the subject of this action is
14 located in this district and that Plaintiff's cause of action arose in this district.

15
16 **FACTUAL ALLEGATIONS:**

17 26. Cardenas is a facility open to the public, a place of public
18 accommodation, and a business establishment.

19 27. Parking spaces are one of the facilities, privileges and advantages
20 offered by Defendants to patrons of Cardenas.

21 28. In June 2014, Defendants had failed to maintain the parking spaces in
22 compliance with the Americans with Disabilities Act Accessibility Guidelines
23 (ADAAG).

24 29. In June 2014, the spaces marked and reserved for persons with
25 disabilities measured less than 216 inches in length.

26 30. In June 2014, the access aisles serving the spaces marked and reserved
27 for persons with disabilities measured less than 216 inches in length.

28 31. In June 2014, not all of the spaces marked and reserved for persons with

1 disabilities had the required pole or wall mounted signage with the wheelchair
2 logo.

3 32. In June 2014, not all of the spaces marked and reserved for persons with
4 disabilities had the required "Minimum Fine \$250" signage.

5 33. In June 2014, not all of the spaces marked and reserved for persons with
6 disabilities had the required tow away signage.

7 34. In June 2014, Defendants had permitted the paint in and around the
8 spaces marked and reserved for persons with disabilities to fade to near
9 oblivion.

10 35. In June 2014, Defendants had permitted the paint in and around the
11 access aisles to fade to near oblivion.

12 36. In June 2014, some of the spaces and access aisles marked and reserved
13 for persons with disabilities were not level with each other because there were
14 built up curb ramps that ran into the access aisles, resulting in slopes greater
15 than 2%.

16 37. In June 2014, some of the spaces marked and reserved for persons with
17 disabilities had cross slopes greater than 2%.

18 38. In June 2014, some of the spaces marked and reserved for persons with
19 disabilities had running slopes greater than 2%.

20 39. In June 2014, some of the access aisles serving the spaces marked and
21 reserved for persons with disabilities had cross slopes greater than 2%.

22 40. In June 2014, some of the access aisles serving the spaces marked and
23 reserved for persons with disabilities had running slopes greater than 2%.

24 41. In June 2014, Defendants had no policy or procedure in place to ensure
25 that the spaces marked and reserved for persons with disabilities were kept
26 clear of shopping carts.

27 42. In June 2014, Defendants had no policy or procedure in place to ensure
28 that the access aisles were kept clear of shopping carts.

1 43. In June 2014, Defendants had no policy or procedure in place to ensure
2 that the spaces marked and reserved for persons with disabilities were usable
3 by disabled patrons.

4 44. In July 2014, Defendants had failed to maintain the parking spaces in
5 compliance with the ADAAG.

6 45. In July 2014, the spaces marked and reserved for persons with
7 disabilities measured less than 216 inches in length.

8 46. In July 2014, the access aisles serving the spaces marked and reserved
9 for persons with disabilities measured less than 216 inches in length.

10 47. In July 2014, not all of the spaces marked and reserved for persons with
11 disabilities had the required pole or wall mounted signage with the wheelchair
12 logo.

13 48. In July 2014, not all of the spaces marked and reserved for persons with
14 disabilities had the required "Minimum Fine \$250" signage.

15 49. In July 2014, not all of the spaces marked and reserved for persons with
16 disabilities had the required tow away signage.

17 50. In July 2014, Defendants had permitted the paint in and around the
18 spaces marked and reserved for persons with disabilities to fade to near
19 oblivion.

20 51. In July 2014, Defendants had permitted the paint in and around the
21 access aisles to fade to near oblivion.

22 52. In July 2014, some of the spaces and access aisles marked and reserved
23 for persons with disabilities were not level with each other because there were
24 built up curb ramps that ran into the access aisles, resulting in slopes greater
25 than 2%.

26 53. In July 2014, some of the spaces marked and reserved for persons with
27 disabilities had cross slopes greater than 2%.

28 54. In July 2014, some of the spaces marked and reserved for persons with

1 disabilities had running slopes greater than 2%.

2 55. In July 2014, some of the access aisles serving the spaces marked and
3 reserved for persons with disabilities had cross slopes greater than 2%.

4 56. In July 2014, some of the access aisles serving the spaces marked and
5 reserved for persons with disabilities had running slopes greater than 2%.

6 57. In July 2014, Defendants had no policy or procedure in place to ensure
7 that the spaces marked and reserved for persons with disabilities were kept
8 clear of shopping carts.

9 58. In July 2014, Defendants had no policy or procedure in place to ensure
10 that the access aisles were kept clear of shopping carts.

11 59. In July 2014, Defendants had no policy or procedure in place to ensure
12 that the spaces marked and reserved for persons with disabilities were usable
13 by disabled patrons.

14 60. In August 2014, Defendants had failed to maintain the parking spaces
15 in compliance with the ADAAG.

16 61. In August 2014, the spaces marked and reserved for persons with
17 disabilities measured less than 216 inches in length.

18 62. In August 2014, the access aisles serving the spaces marked and
19 reserved for persons with disabilities measured less than 216 inches in length.

20 63. In August 2014, not all of the spaces marked and reserved for persons
21 with disabilities had the required pole or wall mounted signage with the
22 wheelchair logo.

23 64. In August 2014, not all of the spaces marked and reserved for persons
24 with disabilities had the required "Minimum Fine \$250" signage.

25 65. In August 2014, not all of the spaces marked and reserved for persons
26 with disabilities had the required tow away signage.

27 66. In August 2014, Defendants had permitted the paint in and around the
28 spaces marked and reserved for persons with disabilities to fade to near

1 oblivion.

2 67. In August 2014, Defendants had permitted the paint in and around the
3 access aisles to fade to near oblivion.

4 68. In August 2014, some of the spaces and access aisles marked and
5 reserved for persons with disabilities were not level with each other because
6 there were built up curb ramps that ran into the access aisles, resulting in slopes
7 greater than 2%.

8 69. In August 2014, some of the spaces marked and reserved for persons
9 with disabilities had cross slopes greater than 2%.

10 70. In August 2014, some of the spaces marked and reserved for persons
11 with disabilities had running slopes greater than 2%.

12 71. In August 2014, some of the access aisles serving the spaces marked
13 and reserved for persons with disabilities had cross slopes greater than 2%.

14 72. In August 2014, some of the access aisles serving the spaces marked
15 and reserved for persons with disabilities had running slopes greater than 2%.

16 73. In August 2014, Defendants had no policy or procedure in place to
17 ensure that the spaces marked and reserved for persons with disabilities were
18 kept clear of shopping carts.

19 74. In August 2014, Defendants had no policy or procedure in place to
20 ensure that the access aisles were kept clear of shopping carts.

21 75. In August 2014, Defendants had no policy or procedure in place to
22 ensure that the spaces marked and reserved for persons with disabilities were
23 usable by disabled patrons.

24 76. In September 2014, Defendants had failed to maintain the parking
25 spaces in compliance with the ADAAG.

26 77. In September 2014, the spaces marked and reserved for persons with
27 disabilities measured less than 216 inches in length.

28 78. In September 2014, the access aisles serving the spaces marked and

1 reserved for persons with disabilities measured less than 216 inches in length.

2 79. In September 2014, not all of the spaces marked and reserved for
3 persons with disabilities had the required pole or wall mounted signage with
4 the wheelchair logo.

5 80. In September 2014, not all of the spaces marked and reserved for
6 persons with disabilities had the required "Minimum Fine \$250" signage.

7 81. In September 2014, not all of the spaces marked and reserved for
8 persons with disabilities had the required tow away signage.

9 82. In September 2014, Defendants had permitted the paint in and around
10 the spaces marked and reserved for persons with disabilities to fade to near
11 oblivion.

12 83. In September 2014, Defendants had permitted the paint in and around
13 the access aisles to fade to near oblivion.

14 84. In September 2014, some of the spaces and access aisles marked and
15 reserved for persons with disabilities were not level with each other because
16 there were built up curb ramps that ran into the access aisles, resulting in slopes
17 greater than 2%.

18 85. In September 2014, some of the spaces marked and reserved for
19 persons with disabilities had cross slopes greater than 2%.

20 86. In September 2014, some of the spaces marked and reserved for
21 persons with disabilities had running slopes greater than 2%.

22 87. In September 2014, some of the access aisles serving the spaces marked
23 and reserved for persons with disabilities had cross slopes greater than 2%.

24 88. In September 2014, some of the access aisles serving the spaces marked
25 and reserved for persons with disabilities had running slopes greater than 2%.

26 89. In September 2014, Defendants had no policy or procedure in place to
27 ensure that the spaces marked and reserved for persons with disabilities were
28 kept clear of shopping carts.

1 90. In September 2014, Defendants had no policy or procedure in place to
2 ensure that the access aisles were kept clear of shopping carts.

3 91. In September 2014, Defendants had no policy or procedure in place to
4 ensure that the spaces marked and reserved for persons with disabilities were
5 usable by disabled patrons.

6 92. In October 2014, Defendants had failed to maintain the parking spaces
7 in compliance with the ADAAG.

8 93. In October 2014, the spaces marked and reserved for persons with
9 disabilities measured less than 216 inches in length.

10 94. In October 2014, the access aisles serving the spaces marked and
11 reserved for persons with disabilities measured less than 216 inches in length.

12 95. In October 2014, not all of the spaces marked and reserved for persons
13 with disabilities had the required pole or wall mounted signage with the
14 wheelchair logo.

15 96. In October 2014, not all of the spaces marked and reserved for persons
16 with disabilities had the required "Minimum Fine \$250" signage.

17 97. In October 2014, not all of the spaces marked and reserved for persons
18 with disabilities had the required tow away signage.

19 98. In October 2014, Defendants had permitted the paint in and around the
20 spaces marked and reserved for persons with disabilities to fade to near
21 oblivion.

22 99. In October 2014, Defendants had permitted the paint in and around the
23 access aisles to fade to near oblivion.

24 100. In October 2014, some of the spaces and access aisles marked
25 and reserved for persons with disabilities were not level with each other
26 because there were built up curb ramps that ran into the access aisles, resulting
27 in slopes greater than 2%.

28 101. In October 2014, some of the spaces marked and reserved for

1 persons with disabilities had cross slopes greater than 2%.

2 102. In October 2014, some of the spaces marked and reserved for
3 persons with disabilities had running slopes greater than 2%.

4 103. In October 2014, some of the access aisles serving the spaces
5 marked and reserved for persons with disabilities had cross slopes greater than
6 2%.

7 104. In October 2014, some of the access aisles serving the spaces
8 marked and reserved for persons with disabilities had running slopes greater
9 than 2%.

10 105. In October 2014, Defendants had no policy or procedure in place
11 to ensure that the spaces marked and reserved for persons with disabilities
12 were kept clear of shopping carts.

13 106. In October 2014, Defendants had no policy or procedure in place
14 to ensure that the access aisles were kept clear of shopping carts.

15 107. In October 2014, Defendants had no policy or procedure in place
16 to ensure that the spaces marked and reserved for persons with disabilities
17 were usable by disabled patrons.

18 108. In December 2014, Defendants had failed to maintain the
19 parking spaces in compliance with the ADAAG.

20 109. In December 2014, the spaces marked and reserved for persons
21 with disabilities measured less than 216 inches in length.

22 110. In December 2014, the access aisles serving the spaces marked
23 and reserved for persons with disabilities measured less than 216 inches in
24 length.

25 111. In December 2014, not all of the spaces marked and reserved for
26 persons with disabilities had the required pole or wall mounted signage with
27 the wheelchair logo.

28 112. In December 2014, not all of the spaces marked and reserved for

1 persons with disabilities had the required "Minimum Fine \$250" signage.

2 113. In December 2014, not all of the spaces marked and reserved for
3 persons with disabilities had the required tow away signage.

4 114. In December 2014, Defendants had permitted the paint in and
5 around the spaces marked and reserved for persons with disabilities to fade to
6 near oblivion.

7 115. In December 2014, Defendants had permitted the paint in and
8 around the access aisles to fade to near oblivion.

9 116. In December 2014, some of the spaces and access aisles marked
10 and reserved for persons with disabilities were not level with each other
11 because there were built up curb ramp that ran into the access aisles, resulting
12 in slopes greater than 2%.

13 117. In December 2014, some of the spaces marked and reserved for
14 persons with disabilities had cross slopes greater than 2%.

15 118. In December 2014, some of the spaces marked and reserved for
16 persons with disabilities had running slopes greater than 2%.

17 119. In December 2014, some of the access aisles serving the spaces
18 marked and reserved for persons with disabilities had cross slopes greater than
19 2%.

20 120. In December 2014, some of the access aisles serving the spaces
21 marked and reserved for persons with disabilities had running slopes greater
22 than 2%.

23 121. In December 2014, Defendants had no policy or procedure in
24 place to ensure that the spaces marked and reserved for persons with
25 disabilities were kept clear of shopping carts.

26 122. In December 2014, Defendants had no policy or procedure in
27 place to ensure that the access aisles were kept clear of shopping carts.

28 123. In December 2014, Defendants had no policy or procedure in

1 place to ensure that the spaces marked and reserved for persons with
2 disabilities were usable by disabled patrons.

3 124. In February 2015, Defendants had failed to maintain the parking
4 spaces in compliance with the ADAAG.

5 125. In February 2015, the spaces marked and reserved for persons
6 with disabilities measured less than 216 inches in length.

7 126. In February 2015, the access aisles serving the spaces marked
8 and reserved for persons with disabilities measured less than 216 inches in
9 length.

10 127. In February 2015, not all of the spaces marked and reserved for
11 persons with disabilities had the required pole or wall mounted signage with
12 the wheelchair logo.

13 128. In February 2015, not all of the spaces marked and reserved for
14 persons with disabilities had the required "Minimum Fine \$250" signage.

15 129. In February 2015, not all of the spaces marked and reserved for
16 persons with disabilities had the required tow away signage.

17 130. In February 2015, Defendants had permitted the paint in and
18 around the spaces marked and reserved for persons with disabilities to fade to
19 near oblivion.

20 131. In February 2015, Defendants had permitted the paint in and
21 around the access aisles to fade to near oblivion.

22 132. In February 2015, some of the spaces and access aisles marked
23 and reserved for persons with disabilities were not level with each other
24 because there were built up curb ramps that ran into the access aisles, resulting
25 in slopes greater than 2%.

26 133. In February 2015, some of the spaces marked and reserved for
27 persons with disabilities had cross slopes greater than 2%.

28 134. In February 2015, some of the spaces marked and reserved for

1 persons with disabilities had running slopes greater than 2%.

2 135. In February 2015, some of the access aisles serving the spaces
3 marked and reserved for persons with disabilities had cross slopes greater than
4 2%.

5 136. In February 2015, some of the access aisles serving the spaces
6 marked and reserved for persons with disabilities had running slopes greater
7 than 2%.

8 137. In February 2015, Defendants had no policy or procedure in
9 place to ensure that the spaces marked and reserved for persons with
10 disabilities were kept clear of shopping carts.

11 138. In February 2015, Defendants had no policy or procedure in
12 place to ensure that the access aisles were kept clear of shopping carts.

13 139. In February 2015, Defendants had no policy or procedure in
14 place to ensure that the spaces marked and reserved for persons with
15 disabilities were usable by disabled patrons.

16 140. In March 2015, Defendants had failed to maintain the parking
17 spaces in compliance with the ADAAG.

18 141. In March 2015, the spaces marked and reserved for persons with
19 disabilities measured less than 216 inches in length.

20 142. In March 2015, the access aisles serving the spaces marked and
21 reserved for persons with disabilities measured less than 216 inches in length.

22 143. In March 2015, not all of the spaces marked and reserved for
23 persons with disabilities had the required pole or wall mounted signage with
24 the wheelchair logo.

25 144. In March 2015, not all of the spaces marked and reserved for
26 persons with disabilities had the required "Minimum Fine \$250" signage.

27 145. In March 2015, not all of the spaces marked and reserved for
28 persons with disabilities had the required tow away signage.

1 146. In March 2015, Defendants had permitted the paint in and
2 around the spaces marked and reserved for persons with disabilities to fade to
3 near oblivion.

4 147. In March 2015, Defendants had permitted the paint in and
5 around the access aisles to fade to near oblivion.

6 148. In March 2015, some of the spaces and access aisles marked and
7 reserved for persons with disabilities were not level with each other because
8 there were built up curb ramps that ran into the access aisles, resulting in slopes
9 greater than 2%.

10 149. In March 2015, some of the spaces marked and reserved for
11 persons with disabilities had cross slopes greater than 2%.

12 150. In March 2015, some of the spaces marked and reserved for
13 persons with disabilities had running slopes greater than 2%.

14 151. In March 2015, some of the access aisles serving the spaces
15 marked and reserved for persons with disabilities had cross slopes greater than
16 2%.

17 152. In March 2015, some of the access aisles serving the spaces
18 marked and reserved for persons with disabilities had running slopes greater
19 than 2%.

20 153. In March 2015, Defendants had no policy or procedure in place
21 to ensure that the spaces marked and reserved for persons with disabilities
22 were kept clear of shopping carts.

23 154. In March 2015, Defendants had no policy or procedure in place
24 to ensure that the access aisles were kept clear of shopping carts.

25 155. In March 2015, Defendants had no policy or procedure in place
26 to ensure that the spaces marked and reserved for persons with disabilities
27 were usable by disabled patrons.

28 156. In April 2015, Defendants had failed to maintain the parking

1 spaces in compliance with the ADAAG.

2 157. In April 2015, the spaces marked and reserved for persons with
3 disabilities measured less than 216 inches in length.

4 158. In April 2015, the access aisles serving the spaces marked and
5 reserved for persons with disabilities measured less than 216 inches in length.

6 159. In April 2015, not all of the spaces marked and reserved for
7 persons with disabilities had the required pole or wall mounted signage with
8 the wheelchair logo.

9 160. In April 2015, not all of the spaces marked and reserved for
10 persons with disabilities had the required "Minimum Fine \$250" signage.

11 161. In April 2015, not all of the spaces marked and reserved for
12 persons with disabilities had the required tow away signage.

13 162. In April 2015, Defendants had permitted the paint in and around
14 the spaces marked and reserved for persons with disabilities to fade to near
15 oblivion.

16 163. In April 2015, Defendants had permitted the paint in and around
17 the access aisles to fade to near oblivion.

18 164. In April 2015, some of the spaces and access aisles marked and
19 reserved for persons with disabilities were not level with each other because
20 there were built up curb ramps that ran into the access aisles, resulting in slopes
21 greater than 2%.

22 165. In April 2015, some of the spaces marked and reserved for
23 persons with disabilities had cross slopes greater than 2%.

24 166. In April 2015, some of the spaces marked and reserved for
25 persons with disabilities had running slopes greater than 2%.

26 167. In April 2015, some of the access aisles serving the spaces
27 marked and reserved for persons with disabilities had cross slopes greater than
28 2%.

1 168. In April 2015, some of the access aisles serving the spaces
2 marked and reserved for persons with disabilities had running slopes greater
3 than 2%.

4 169. In April 2015, Defendants had no policy or procedure in place to
5 ensure that the spaces marked and reserved for persons with disabilities were
6 kept clear of shopping carts.

7 170. In April 2015, Defendants had no policy or procedure in place to
8 ensure that the access aisles were kept clear of shopping carts.

9 171. In April 2015, Defendants had no policy or procedure in place to
10 ensure that the spaces marked and reserved for persons with disabilities were
11 usable by disabled patrons.

12 172. Currently, Defendants have failed to maintain the parking spaces
13 in compliance with the ADAAG.

14 173. Currently, the spaces marked and reserved for persons with
15 disabilities measure less than 216 inches in length.

16 174. Currently, the access aisles serving the spaces marked and
17 reserved for persons with disabilities measure less than 216 inches in length.

18 175. Currently, not all of the spaces marked and reserved for persons
19 with disabilities have the required pole or wall mounted signage with the
20 wheelchair logo.

21 176. Currently, not all of the spaces marked and reserved for persons
22 with disabilities have the required "Minimum Fine \$250" signage.

23 177. Currently, not all of the spaces marked and reserved for persons
24 with disabilities have the required tow away signage.

25 178. Currently, Defendants have permitted the paint in and around
26 the spaces marked and reserved for persons with disabilities to fade to near
27 oblivion.

28 179. Currently, Defendants have permitted the paint in and around

1 the access aisles to fade to near oblivion.

2 180. Currently, some of the spaces and access aisles marked and
3 reserved for persons with disabilities are not level with each other because
4 there are built up curb ramps that run into the access aisles, resulting in slopes
5 greater than 2%.

6 181. Currently, some of the spaces marked and reserved for persons
7 with disabilities have cross slopes greater than 2%.

8 182. Currently, some of the spaces marked and reserved for persons
9 with disabilities have running slopes greater than 2%.

10 183. Currently, some of the access aisles serving the spaces marked
11 and reserved for persons with disabilities have cross slopes greater than 2%.

12 184. Currently, some of the access aisles serving the spaces marked
13 and reserved for persons with disabilities have running slopes greater than 2%.

14 185. Currently, Defendants have no policy or procedure in place to
15 ensure that the spaces marked and reserved for persons with disabilities are
16 kept clear of shopping carts.

17 186. Currently, Defendants have no policy or procedure in place to
18 ensure that the access aisles are kept clear of shopping carts.

19 187. Currently, Defendants have no policy or procedure in place to
20 ensure that the spaces marked and reserved for persons with disabilities are
21 usable by disabled patrons.

22 188. Paths of travel are another one of the facilities, privileges, and
23 advantages offered by Defendants to patrons of Cardenas.

24 189. In June 2014, Defendants failed provide a clearly marked path of
25 travel from the disabled parking spaces to the entrance.

26 190. In July 2014, Defendants failed provide a clearly marked path of
27 travel from the disabled parking spaces to the entrance.

28 191. In August 2014, Defendants failed provide a clearly marked path

1 of travel from the disabled parking spaces to the entrance.

2 192. In September 2014, Defendants failed provide a clearly marked
3 path of travel from the disabled parking spaces to the entrance.

4 193. In October 2014, Defendants failed provide a clearly marked
5 path of travel from the disabled parking spaces to the entrance.

6 194. In December 2014, Defendants failed provide a clearly marked
7 path of travel from the disabled parking spaces to the entrance.

8 195. In February 2014, Defendants failed provide a clearly marked
9 path of travel from the disabled parking spaces to the entrance.

10 196. In March 2014, Defendants failed provide a clearly marked path
11 of travel from the disabled parking spaces to the entrance.

12 197. In April 2014, Defendants failed provide a clearly marked path of
13 travel from the disabled parking spaces to the entrance.

14 198. Currently, Defendants fail to provide a clearly marked path of
15 travel from the disabled parking spaces to the entrance.

16 199. Self-service in the produce department is another one of the
17 facilities, privileges, and advantages offered by Defendants to patrons of
18 Cardenas.

19 200. In June 2014, many of the produce bag dispensers were placed
20 more than 48 inches above the floor.

21 201. In June 2014, many of the produce scales were placed so that
22 their highest operable parts were more than 48 inches above the floor.

23 202. In July 2014, many of the produce bag dispensers were placed
24 more than 48 inches above the floor.

25 203. In July 2014, many of the produce scales were placed so that their
26 highest operable parts were more than 48 inches above the floor.

27 204. In August 2014, many of the produce bag dispensers were placed
28 more than 48 inches above the floor.

1 205. In August 2014, many of the produce scales were placed so that
2 their highest operable parts were more than 48 inches above the floor.

3 206. In September 2014, many of the produce bag dispensers were
4 placed more than 48 inches above the floor.

5 207. In September 2014, many of the produce scales were placed so
6 that their highest operable parts were more than 48 inches above the floor.

7 208. In October 2014, many of the produce bag dispensers were
8 placed more than 48 inches above the floor.

9 209. In October 2014, many of the produce scales were placed so that
10 their highest operable parts were more than 48 inches above the floor.

11 210. In December 2014, many of the produce bag dispensers were
12 placed more than 48 inches above the floor.

13 211. In December 2014, many of the produce scales were placed so
14 that their highest operable parts were more than 48 inches above the floor.

15 212. In February 2015, many of the produce bag dispensers were
16 placed more than 48 inches above the floor.

17 213. In February 2015, many of the produce scales were placed so that
18 their highest operable parts were more than 48 inches above the floor.

19 214. In March 2015, many of the produce bag dispensers were placed
20 more than 48 inches above the floor.

21 215. In March 2015, many of the produce scales were placed so that
22 their highest operable parts were more than 48 inches above the floor.

23 216. In April 2015, many of the produce bag dispensers were placed
24 more than 48 inches above the floor.

25 217. In April 2015, many of the produce scales were placed so that
26 their highest operable parts were more than 48 inches above the floor.

27 218. Currently, many of the produce bag dispensers are placed more
28 than 48 inches above the floor.

1 219. Currently, many of the produce scales are placed so that their
2 highest operable parts are more than 48 inches above the floor.

3 220. Point-of-sale machines at the cashier counters are another one of
4 the facilities, privileges, and advantages offered by Defendants to patrons of
5 Cardenas.

6 221. In June 2014, the point-of-sale machines, consisting of a card
7 reader, keypad, and screen were placed on top of the transaction counters.

8 222. In June 2014, the point-of-sale machines were located higher
9 than 34 inches above the floor.

10 223. In June 2014, the point-of-sale machines were not readily visible
11 to and useable by wheelchair users.

12 224. In July 2014, the point-of-sale machines, consisting of a card
13 reader, keypad, and screen were placed on top of the transaction counters.

14 225. In July 2014, the point-of-sale machines were located higher
15 than 34 inches above the floor.

16 226. In July 2014, the point-of-sale machines were not readily
17 visible to and useable by wheelchair users.

18 227. In August 2014, the point-of-sale machines, consisting of a card
19 reader, keypad, and screen were placed on top of the transaction counters.

20 228. In August 2014, the point-of-sale machines were located higher
21 than 34 inches above the floor.

22 229. In August 2014, the point-of-sale machines were not readily
23 visible to and useable by wheelchair users.

24 230. In September 2014, the point-of-sale machines, consisting of a
25 card reader, keypad, and screen were placed on top of the transaction counters.

26 231. In September 2014, the point-of-sale machines were located
27 higher than 34 inches above the floor.

28 232. In September 2014, the point-of-sale machines were not readily

1 visible to and useable by wheelchair users.

2 233. In October 2014, the point-of-sale machines, consisting of a card
3 reader, keypad, and screen were placed on top of the transaction counters.

4 234. In October 2014, the point-of-sale machines were located higher
5 than 34 inches above the floor.

6 235. In October 2014, the point-of-sale machines were not readily
7 visible to and useable by wheelchair users.

8 236. In December 2014, the point-of-sale machines, consisting of a
9 card reader, keypad, and screen were placed on top of the transaction counters.

10 237. In December 2014, the point-of-sale machines were located
11 higher than 34 inches above the floor.

12 238. In December 2014, the point-of-sale machines were not readily
13 visible to and useable by wheelchair users.

14 239. In February 2015, the point-of-sale machines, consisting of a
15 card reader, keypad, and screen were placed on top of the transaction counters.

16 240. In February 2015, the point-of-sale machines were located
17 higher than 34 inches above the floor.

18 241. In February 2015, the point-of-sale machines were not readily
19 visible to and useable by wheelchair users.

20 242. In March 2015, the point-of-sale machines, consisting of a card
21 reader, keypad, and screen were placed on top of the transaction counters.

22 243. In March 2015, the point-of-sale machines were located higher
23 than 34 inches above the floor.

24 244. In March 2015, the point-of-sale machines were not readily
25 visible to and useable by wheelchair users.

26 245. In April 2015, the point-of-sale machines, consisting of a card
27 reader, keypad, and screen were placed on top of the transaction counters.

28 246. In April 2015, the point-of-sale machines were located higher

1 than 34 inches above the floor.

2 247. In April 2015, the point-of-sale machines were not readily visible
3 to and useable by wheelchair users.

4 248. Currently, the point-of-sale machines, consisting of a card reader,
5 keypad, and screen are placed on top of the transaction counters.

6 249. Currently, the point-of-sale machines are located higher than 34
7 inches above the floor.

8 250. Currently, the point-of-sale machines are not readily visible to
9 and useable by wheelchair users.

10 251. Plaintiff visited Cardenas in June 2014.

11 252. Plaintiff visited Cardenas in July 2014.

12 253. Plaintiff visited Cardenas in August 2014.

13 254. Plaintiff visited Cardenas in September 2014.

14 255. Plaintiff visited Cardenas in October 2014.

15 256. Plaintiff visited Cardenas in December 2014.

16 257. Plaintiff visited Cardenas in February 2015.

17 258. Plaintiff visited Cardenas in March 2015.

18 259. Plaintiff visited Cardenas in April 2015.

19 260. Plaintiff personally encountered the barriers.

20 261. These barriers denied Plaintiff full and equal access and caused
21 him great difficulty and frustration.

22 262. Transaction counters are another one of the facilities, privileges,
23 and advantages offered by Defendants to patrons of Cardenas.

24 263. And although he did not personally confront the following
25 barriers, Plaintiff alleges that the transaction counters at Cardenas are
26 inaccessible to persons with disabilities.

27 264. Plaintiff alleges that merchandise is kept on the transaction
28 counter in the hot food/deli area, which narrows the clear space of that counter

1 to less than 36 inches.

2 265. Plaintiff alleges that the butcher counter in the meat and seafood
3 department is more than 36 inches in height.

4 266. Plaintiff alleges that there is no lowered, 36-inch or lower portion
5 of the butcher counter for a person with disabilities to use, to interact with store
6 personnel, or to receive his order.

7 267. Additionally, Plaintiff alleges that there is a ticket dispenser
8 placed on the counter in the butcher area for patrons to take a serving number.

9 268. Plaintiff alleges that the ticket dispenser is more than 48 inches
10 above the finish floor and not effectively used by wheelchair users.

11 269. Restrooms are another one of the facilities, privileges and
12 advantages offered by Defendants to patrons of Cardenas.

13 270. And although he did not personally confront the barriers within,
14 Plaintiff alleges that the restrooms at Cardenas are inaccessible to persons
15 with disabilities.

16 271. Plaintiff alleges that the plumbing underneath the sink is not
17 wrapped to protect against burning contact.

18 272. Plaintiff alleges that there is no clear floor space in front of the
19 disposable toilet seat cover dispenser because it is mounted on the wall behind
20 the toilet.

21 273. Plaintiff would like to return to and patronize Cardenas but will
22 be deterred from visiting until the defendants cure the violations.

23 274. The violations identified above are easily removed without much
24 difficulty or expense. They are the types of barriers identified by the
25 Department of Justice as presumably readily achievable to remove and, in fact,
26 these barriers are readily achievable to remove. Moreover, there are numerous
27 alternative accommodations that could be made to provide a greater level of
28 access if complete removal were not achievable.

1 275. Additionally, on information and belief, the plaintiff alleges that
 2 the failure to remove these barriers was intentional because: (1) these
 3 particular barriers are intuitive and obvious; (2) the defendants exercised
 4 control and dominion over the conditions at this location and, therefore, the
 5 lack of accessible facilities was not an “accident” because, had the defendants
 6 intended any other configuration, they had the means and ability to make the
 7 change.

8 276. Given the obvious and blatant violation, the plaintiff alleges, on
 9 information and belief, that there are other violations and barriers on the site
 10 that relate to her disability. Plaintiff will amend the Complaint to provide
 11 proper notice regarding the scope of this lawsuit once she conducts a site
 12 inspection. However, please be on notice that the plaintiff seeks to have all
 13 barriers related to her disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
 14 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
 15 he can sue to have all barriers that relate to her disability removed regardless
 16 of whether he personally encountered them).

17 277. Plaintiff is and has been deterred from returning and patronizing
 18 Cardenas because of his knowledge of the illegal barriers that exist. Plaintiff
 19 will, nonetheless, return to the business to assess ongoing compliance with the
 20 ADA and will return to patronize Cardenas as a customer once the barriers are
 21 removed.

22
 23 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 24 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 25 Defendants.) (42 U.S.C. section 12101, et seq.)

26 278. Plaintiff re-pleads and incorporates by reference, as if fully set
 27 forth again herein, the allegations contained in all prior paragraphs of this
 28 complaint.

1 279. Under the ADA, it is an act of discrimination to fail to ensure that
2 the privileges, advantages, accommodations, facilities, goods and services of
3 any place of public accommodation is offered on a full and equal basis by
4 anyone who owns, leases, or operates a place of public accommodation. See 42
5 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 6 a. A failure to make reasonable modifications in policies, practices,
7 or procedures, when such modifications are necessary to afford
8 goods, services, facilities, privileges, advantages, or
9 accommodations to individuals with disabilities, unless the
10 accommodation would work a fundamental alteration of those
11 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 12 b. A failure to remove architectural barriers where such removal is
13 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
14 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
15 Appendix “D.”
- 16 c. A failure to make alterations in such a manner that, to the
17 maximum extent feasible, the altered portions of the facility are
18 readily accessible to and usable by individuals with disabilities,
19 including individuals who use wheelchairs or to ensure that, to the
20 maximum extent feasible, the path of travel to the altered area and
21 the bathrooms, telephones, and drinking fountains serving the
22 altered area, are readily accessible to and usable by individuals
23 with disabilities. 42 U.S.C. § 12183(a)(2).

24 280. Any business that provides parking spaces must provide
25 accessible parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208.
26 To qualify as a reserved handicap parking space, the space must be properly
27 marked and designated. Under the ADA, the method, color of marking, and
28 length of the parking space are to be addressed by state or local laws or

1 regulations. See 36 C.F.R., Part 1191, § 502.3.3. Under the California
 2 Building Code, to properly and effectively reserve a parking space for persons
 3 with disabilities, each parking space must be at least 216 inches in length. CBC
 4 § 11B-502.2. The access aisle must extend the full length of the parking spaces
 5 it serves. 2010 Standards § 502.3.2. Under the California Building Code, to
 6 properly and effectively reserve a parking space for persons with disabilities,
 7 each such space must be identified with a reflectorized sign permanently
 8 posted adjacent to and visible from each stall or space. CBC § 1129B.4. The
 9 sign must consist of the International Symbol of Accessibility (♿) in white on
 10 a blue background. *Id.* It cannot be smaller than 70 square inches and must be
 11 mounted so that there is a minimum of 80 inches from the bottom of the sign
 12 to the parking space. *Id.* Signs must be posted so that they cannot be obscured
 13 by a vehicle parking in the space. *Id.* An additional sign or additional language
 14 below the symbol of accessibility must state, “Minimum Fine \$250” to ensure
 15 that the space remains available for persons with disabilities. *Id.* Another sign
 16 must be posted in a conspicuous place at the entrance to the parking lot or
 17 immediately adjacent to each handicap parking space, with lettering 1 inch in
 18 height, that clearly and conspicuously warn that unauthorized vehicles
 19 parking in the handicap parking spaces can be towed at the owner’s expense.
 20 *Id.* Additionally, the surface of the handicap parking stall must have a profile
 21 view of a wheelchair occupant (♿) that is 36 inches by 36 inches. *Id.* And the
 22 surface of the access aisle must have a blue border. CBC § 1129B.3. The words
 23 “NO PARKING” in letters at least a foot high must be painted on the access
 24 aisle. *Id.* Lastly, The access aisle must extend the full length of the parking
 25 spaces it serves. 2010 Standards at § 502.3.2.

26 281. Here, the designated accessible parking spaces were less than
 27 216 inches in length, in violation of the ADA.

28 282. Here, the access aisles serving the designated accessible parking

1 spaces were less than 216 inches in length, in violation of the ADA.

2 283. Here, Defendants failed to post the International Symbol of
3 Accessibility signage, in violation of the ADA.

4 284. Here, Defendants failed to post the required "Minimum Fine
5 \$250" signage, in violation of the ADA.

6 285. Here, Defendants failed to post the required tow-away signage, in
7 violation of the ADA.

8 286. Here, the markings in and around the parking had faded beyond
9 recognition, in violation of the ADA.

10 287. Here, the parking simply failed to comply.

11 288. Under the 1991 Standards, parking spaces and access aisles must
12 be level with surface slopes not exceeding 1:50 (2%) in all directions. 1991
13 Standards § 4.6.3. Access aisles shall be at the same level as the parking spaces
14 they serve; changes in level are not permitted. 2010 Standards 502.4. "Access
15 aisle are required to be nearly level in all directions to provide a surface for
16 wheelchair transfer to and from vehicles." 2010 Standards § 502.4 Advisory.
17 Specifically, built up curb ramps are not permitted to project into access aisles
18 and parking spaces. *Id.* No more than a 1:48 slope is permitted. 2010
19 Standards § 502.4.

20 289. Here, the access aisles are not level and have ramps taking up part
21 of the access aisle, in violation of the ADA.

22 290. Here the failure to provide level parking is a violation of the ADA.

23 291. Under the ADA, there must be an accessible route within the
24 boundary of the site from the accessible parking to the accessible building
25 entrance they serve. 1991 Standards § 4.3.2(1); 2010 Standards § 206.2. The
26 accessible route shall, to the maximum extent feasible, coincide with the route
27 for the general public. *Id.* The accessible route must be at least 36 inches in
28 width except at doors. 1991 Standards § 4.3.3; 2010 Standards § 403.5.1.

1 292. Here, the failure to provide an accessible path of travel from the
2 rear handicap parking space to the entrance is a violation of the ADA.

3 293. Under the 2010 Standards, the maximum unobstructed high side
4 reach shall not exceed 48 inches, with the low side reach at least 15 inches.
5 2010 Standards § 308.3.1.

6 294. Here, the failure to place produce bags within the reach range
7 mandated by the ADA is a violation of the law.

8 295. Here, the failure to place produce scales within the reach range
9 mandated by the ADA is a violation of the law.

10 296. Point-of-sale machines are covered by height/reach
11 requirements of section 4.27 of the ADAAG for control or operating
12 mechanisms. If the clear floor space allows parallel approach by a person in a
13 wheelchair, the maximum high side reach allowed shall be 54 inches and the
14 low side reach shall be no less than 9 inches above the floor. If the side reach
15 is over an obstruction, the maximum high side reach allowed shall be 34
16 inches. 1991 Standards § 4.2.6.

17 297. Here, the card reader was located greater than 34 inches above
18 the floor, over the transaction counter, and was not visible or useable by
19 persons in wheelchairs, in violation of the ADA.

20 298. In areas used for transactions that may not have a cash register
21 but at which goods or services are sold or distributed, the business must
22 provide either: (1) a portion of the main counter which is a minimum of 36 in
23 inches length shall be provided with a maximum height of 36 inches; or (2) an
24 auxiliary counter with a maximum height of 36 inches in close proximity to the
25 main counter; or (3) some sort of qualifying equivalent facilitation. 1991
26 Standards § 7.2(2). Under the 2010 Standards, where the approach to the sales
27 or service counter is a parallel approach, such as in this case, there must be a
28 portion of the sales counter that is no higher than 36 inches above the floor and

1 36 inches in width and must extend the same depth as the rest of the sales or
2 service counter top. 2010 Standards § 904.4 & 904.4.1.

3 299. Here, no such accessible transaction counter has been provided
4 at the deli or the meat and seafood department, in violation of the ADA.

5 300. Ticket dispensers are covered by the height/reach requirements
6 of 28 C.F.R., Part 36, Appendix D (herein after “1991 Standards”), section
7 4.27, and 36 C.F.R., Part 1191, Appendix D (herein after “2010 Standards”),
8 section 308.3, for control or operating mechanisms. If the clear floor space
9 allows parallel approach by a person in a wheelchair, and the high-side reach is
10 obstructed, the maximum high side reach allowed shall be 48 inches.

11 301. Here, the card reader is located greater than 48 inches above the
12 floor, over the transaction counter, and is useable by persons in wheelchairs,
13 in violation of the ADA.

14 302. Hot water and drainpipes under lavatories must be insulated or
15 otherwise configured to protect against contact. 1991 Standards § 4.19.4;
16 2010 Standards §606.5.

17 303. Here, the failure to wrap the plumbing underneath the sinks is a
18 violation of the ADA.

19 304. Clear floor space that allows a forward or a parallel approach by a
20 person using a wheelchair shall be provided at controls, dispensers,
21 receptacles, and other operable equipment. 1991 Standards § 4.27.2; 2010
22 Standards § 309.2.

23 305. Here, the failure to provide such floor space in front of disposable
24 toilet seat covers is a violation of the ADA.

25 306. A public accommodation must maintain in operable working
26 condition those features of its facilities and equipment that are required to be
27 readily accessible to and usable by persons with disabilities. 28 C.F.R. §
28 36.211(a).

1 307. Here, the failure to ensure that the accessible facilities were
2 available and ready to be used by the plaintiff is a violation of the law.

3
4 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
5 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
6 Code § 51-53.)

7 308. Plaintiff re-pleads and incorporates by reference, as if fully set
8 forth again herein, the allegations contained in all prior paragraphs of this
9 complaint.

10 309. Because the defendants violated the plaintiff's rights under the
11 ADA, they also violated the Unruh Civil Rights Act and are liable for damages.
12 (Cal. Civ. Code § 51(f), 52(a).)

13 310. Because the violation of the Unruh Civil Rights Act resulted in
14 difficulty, discomfort or embarrassment for the plaintiff, the defendants are
15 also each responsible for statutory damages, i.e., a civil penalty. (Cal. Civ. Code
16 § 55.56(a)-(c).)

17
18 **PRAYER:**

19 Wherefore, Plaintiff prays that this Court award damages and provide
20 relief as follows:

21 1. For injunctive relief, compelling Defendants to comply with the
22 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
23 plaintiff is not invoking section 55 of the California Civil Code and is not
24 seeking injunctive relief under the Disabled Persons Act at all.

25 2. Damages under the Unruh Civil Rights Act, which provides for actual
26 damages and a statutory minimum of \$4,000.

1 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3
4 Dated: February 14, 2016

CENTER FOR DISABILITY ACCESS

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7 By: _____
Mark Potter, Esq.
Attorneys for Plaintiff
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